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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11
12 United States of America,

13 Plaintiff,

14 v.

15 Fredy Gutierrez-Valencia,

16 Defendant.

CR-22-CR-01032-PHX-JJT

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR A
DOWNWARD VARIANCE AND
SENTENCING MEMORANDUM**

17 The United States respectfully requests a sentence of 18 months' imprisonment as
18 recommended in the Pretrial Sentencing Report (PSR). A downward variance is
19 unwarranted based on the extent of Defendant's involvement in illicit firearms sales.

20 I. BACKGROUND

21 On August 16, 2022, Defendant was indicted on 26 counts alleging one count of
22 Dealing Firearms Without a License and multiple counts of Making False Statements
23 During the Purchase of Firearms. PSR ¶ 1. The investigation leading to the Indictment
24 revealed that he purchased and sold 74 firearms between February 2020 and December
25 2021. PSR ¶ 8. He lied on the corresponding ATF Form 4473, indicating he was the actual
26 purchaser of each of the firearms. PSR ¶ 10. He likely made around \$100,000 in annual
27 revenue from illegal arms sales. *See* PSR ¶¶ 11-12. He also did not claim this illicit income
28 on his 2021 tax return. PSR ¶ 13.

1 On January 9, 2023, the defendant pleaded guilty to Count 12 of an Indictment,
2 which stipulated to a sentence that shall not exceed the low end of the sentencing range.
3 The Plea Agreement also stipulated to \$6,054 in restitution to the Internal Revenue Service
4 (IRS), which is the amount of Defendant's fraudulently obtained 2021 tax refund. See PSR
5 3.

6 II. SENTENCING GUIDELINES

7 The PSR accurately calculates his guidelines range at 18 to 24 months of
8 incarceration with a Criminal History Category of I and a Total Offense Level of 105 PSR
9 at 13. The Probation Office recommends a sentence of 18 months' imprisonment followed
10 by 3 years of supervised release. *Id.* At sentencing, he will have spent 235 days in custody.
11 PSR at 1.

12 III. GOVERNMENT'S RECCOMENDATION

13 The Government believes a sentence at the low end of the guideline range is
14 warranted by the facts set forth above. In addition, as pointed out in the PSR, Defendant's
15 involvement in purchasing and selling firearms appears much greater than the charged
16 conduct. He spent \$34,700 to purchase military grade body armor, thermal rounds of
17 ammunition, high-capacity magazines, and other items highly desired by Mexican drug
18 cartels. PSR ¶ 9. Two of the firearms he purchased were shortly recovered in Mexico. PSR
19 10. Moreover, Defendant continued to fraudulently purchase firearms to sell after he was
20 warned by Alcohol, Tobacco, Firearms and Explosive agents in February of 2021. Based
21 on all the forgoing information and uncharged conduct, included and not included in the
22 Plea Agreement, a downward variance is unwarranted.

23 Therefore, the Government respectfully requests the Court impose an 18-month
24 sentence followed by 3 years of supervised release. The Government also requests an order
25 of restitution to the IRS in amount of \$6,054.

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Respectfully submitted this 4th day of April 2023.

GARY M. RESTAINO
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District of Arizona

s/ Sheila Phillips
SHEILA PHILLIPS
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s): Jose Luis Mendoza.